

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 14, 2001 at 9:08 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 426, 2/7/2001
Executive Action: SB 282, SB 399

EXECUTIVE ACTION ON SB 282

Motion: SEN. DOHERTY moved that **SB 282 DO PASS.**

Discussion:

SEN. DUANE GRIMES referred to page 3 and asked if they should specify filing directly with the Supreme Court or Court of Appeals.

CHAIRMAN LORENTS GROSFIELD said there was no Court of Appeals.

SEN. GRIMES said that raised a point. Where would the cases go?

CHAIRMAN GROSFIELD said according to the way the current bill was drafted, these cases would go to the Court of Appeals if it was in place by the time the cases came out of the special asbestos court. He said there could be some transition issues, but an amendment at this time was unnecessary.

SEN. GRIMES questioned that on page 1 the definitions on line 24 and 25 referred only to the mining of asbestos. He wondered how tight the language was in light of the number of people who had installed it, so that they wouldn't be using this court.

SEN. STEVE DOHERTY responded that the language focused on the people in Libby. With regard to storage or installation of a product containing vermiculite, it would probably not apply because the site of the injury did not happen in Montana. He said it would not make sense for an out-of-state entity to file a suit in a Montana court.

SEN. GRIMES asked about the children who moved out of state.

SEN. DOHERTY responded that if it was a child of a worker in Montana, then the injury took place in Montana and they would be allowed to use the special court.

SEN. JERRY O'NEIL wondered why it was restricted to vermiculite and not to asbestos. He wanted to include asbestos.

SEN. DOHERTY said he had a point, but the court in the area of which the asbestos injury took place could handle that case and it shouldn't be referred to the special court. The idea behind the legislation was that it was a unique tragedy and it needed to be focused.

SEN. O'NEIL said if he was the janitor infected with asbestos while removing it from pipes, he would want to take advantage of the prosecution and the expert witnesses.

SEN. DOHERTY said he had a point. However, both sides came to an agreement on this bill and expanding it could jeopardize their agreement. He was nervous about changing it.

SEN. GRIMES said it was an intriguing idea, but he would rather have **Judge Prezeau** give the OK to expand it. He preferred to pass it as is.

SEN. DOHERTY said he would call **Judge Prezeau** about expanding the bill to include other asbestos claims because **SEN. O'NEIL** had a point.

CHAIRMAN GROSFIELD said the hearing focused on Libby only, but if money would be spent on it, maybe a phrase limiting it the Libby situation would be a good thing to do. At the end of line 25 a phrase referencing the 19th Judicial District could be added. He felt that was the intent of the bill and would be appropriate.

SEN. DOHERTY said page 2, line 18 had the parties stipulating venue and if W.R. Grace didn't accept the claim, then it wouldn't go. That was part of the goodness in both sides stipulating venue.

CHAIRMAN GROSFIELD corrected himself to say "originated or originates in the 19th Judicial District".

SEN. O'NEIL noted employees of a Great Falls zonalite processing plant should be allowed to use the special court.

SEN. DOHERTY agreed. He argued that no side would be at a disadvantage because they both had to agree and stipulate to it.

SEN. RIC HOLDEN asked why W.R. Grace didn't appear at the hearing.

SEN. DOHERTY responded that **SEN. CRISMORE** had talked with the W.R. Grace representative and they supported the bill. He said he saw a letter from a W.R. Grace attorney and said they didn't show up because they didn't want to spoil the chances of the bill passing. He said they were very sensitive to the fact that they were looked upon as corporate criminals. If they were present to urge adoption, they didn't want it to be seen as a "put-up" job for W.R. Grace.

SEN. HOLDEN didn't agree, especially calling them corporate criminals. He felt both sides should be present at a hearing and complained that the committee never received a letter of support from W.R. Grace.

SEN. DOHERTY replied that **SEN. HOLDEN** would have to question **SEN. CRISMORE's** telling the committee the truth.

SEN. HOLDEN didn't want to be insensitive to the situation, but said it was not an issue in Eastern Montana. He was concerned with establishing new courts simply because of an occurrence. He argued that an Eastern senator could appear next session with a bill relating to the oil or coal mining industries. He urged consideration of the costs, how to contain the costs, and the length of the court. He felt that once courts outside the normal judicial system were established, it could get out of hand. He said the cases probably wouldn't settle in two years, but would be a long-term process. He wanted to put in a sunset provision requiring the legislature to determine the merits of continuing the court. He said people would argue to continue the court in order to preserve their jobs and standing in the judicial system.

CHAIRMAN GROSFIELD acknowledged that specialized courts had been established before, but they involved the entire state. From the perspective of Lincoln County, they couldn't deal with it on their own. He felt it was appropriate for the legislature to jump in as a public policy matter, when something hit one county so hard that they couldn't deal with it.

SEN. HOLDEN said he was concerned with having future Senate Judiciary Committees reviewing the success and merits of the bill.

CHAIRMAN GROSFIELD said the sunset could be done, but wasn't sure if the sunset would disadvantage cases and used by one side to the other side's disadvantage. He said it depended on the length of the sunset. He said a two-year sunset was too short; a longer one might be possible.

SEN. DOHERTY thought the down side of a sunset removed the certainty of the litigants that their cases would be resolved. The certainty was valuable to both defendants and plaintiffs. He argued that one of the tactics used nationally by asbestos defense firms was to delay until the plaintiff died. A sunset diminished the value of the court. He thought the Appropriations Committee, after hearing the progress of the court, would be able to successfully evaluate the merit of the court.

SEN. O'NEIL liked the idea of a sunset, but would have to include a clause for those cases in court at the time that the sunset kicked in.

SEN. GRIMES didn't know all the ramifications of a sunset, but he also didn't want to include a sunset. In other cases, like Arco, the problem was definable. This situation wasn't definable. He was certain that the court system funding problems would not go away. If the proponents were right, this situation would be around for a long time.

{Tape : 1; Side : B}

SEN. HOLDEN questioned the validity of having this court if it couldn't be handled in six years. The idea was to speed it up and have a remedy to the situation. As a plaintiff, he would be disgusted if he couldn't get a settlement within six years.

Motion: **SEN. HOLDEN** moved **AMENDMENT FOR 6-YEAR SUNSET PROVISION for June 30, 2007.**

Discussion:

SEN. O'NEIL said that cases would come along for many years and didn't feel that six years was long enough for the court.

SEN. WALT McNUTT didn't favor the sunset because of the issues' magnitude and importance. He felt it was a Montana issue that the legislature needed to address.

SEN. HOLDEN closed on his motion. If the Legislature did away with the court, the District Court would still exist for hearing the lawsuit.

Vote: Motion to adopt a sunset provision **failed 1-8 with Holden voting aye.**

Discussion resumed on SB 282 Do Pass motion:

SEN. HOLDEN pointed out that it would be a long haul on the court and no one seemed to be concerned about it. He wasn't too keen on the bill, he would like to help them out, but it would get way out of hand. He felt people could be looking to mine some gold just for having insulation in their homes. He noted that this legislature would be the one who set it all up.

SEN. MIKE HALLIGAN didn't support the sunset, but said by not putting it in, it could cause the Senate floor to look at it more closely. He felt it was good that they voted on the issue and it

was noted that the committee did not think it was appropriate. However, he felt it would be revisited.

SEN. DOHERTY addressed the notion that this was a special court for those of Northwestern Montana and the rest of the state/country wouldn't benefit. He noted he didn't get a direct benefit from the water courts, but those were established to protect Montanans' water rights. It didn't bother him because he didn't have water rights as an urban person. However, these urban people were subsidizing the courts with their taxes. He thought it was overall good public policy. To say that the tragedy of a small town was their problem and that the legislature didn't need to take a close look at the situation in terms of helping people in our state was not what the legislature was about. He felt the legislature needed to respond to this unique tragedy forcefully, decently, and with some honor. He noted that since all sides agreed, it was a good step for public policy.

SEN. O'NEIL interjected that if genetically modified seed caused major damage, maybe ranchers would be asking for a special court. The bill should be supported.

CHAIRMAN GROSFIELD said they needed to rise to the occasion to help the county and fellow Montanans. He said it was a disease that killed and it was appropriate to consider it through this bill. He noted that W.R. Grace did not appear, but he did recall that **SEN. CRISMORE** did indicate their support of the bill. He also wanted to clarify that the committee did not feel W.R. Grace was criminal in whatever they did or did not do. The committee was not a court sitting in judgement on them.

SEN. DOHERTY said **CHAIRMAN GROSFIELD** was absolutely right. He said it was his opinion that the actions bordered on criminal, maybe criminal in a legal sense, but criminal in a moral sense, when people in responsibility knew what the effect and danger was and refused to do anything about it, causing people to die. He felt that bordered on criminal in his mind. He noted it was his opinion and didn't have anything to do with the bill. He closed on his motion.

Vote: Motion that **SB 282 Do Pass** carried unanimously.

HEARING ON SB 426

Sponsor: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

Proponents: **NONE**

Opponents: NONE

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, opened on SB 426 saying the proponent was sick. He requested that she be allowed to answer questions prior to the hearing tomorrow. He presented letters from District Judges, **EXHIBIT(jus37a01)** explaining the intent of the bill; from a Missoula County Attorney, **EXHIBIT(jus37a02)**; and from a Justice of the Peace, **EXHIBIT(jus37a03)**. He said prior to trial, people were released on their own recognizance with conditions imposed by the court. Judges utilize pre-trial supervision programs in cases where people were asked to do very specific things. The defendants were required to report to the supervising authority on a regular basis to bring in letters showing completion of various conditions such as anger management. This authorized supervising authorities to arrest a defendant when conditions of the court-ordered release were violated. The judges were concerned about jeopardizing public safety by delaying bench warrants. The bill attempted to authorize the pre-trial services agencies to authorize the supervising agents to arrest or deputize another officer, not a private citizen, to arrest defendants who violated their conditions of release. They would have to file a written statement, within 12 hours of the arrest and detention, with the judge in order to verify the arrest. He emphasized that this was prior to a trial. He said pre-trial services were relatively new and that's why they weren't asked for earlier.

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL questioned if the people in the program were presumed innocent. **SEN. HALLIGAN** said yes, of the underlying offense. They weren't being arrested for the offense, but for violating conditions of release.

SEN. O'NEIL asked if the Constitution said they had the right to make bail. **SEN. HALLIGAN** replied yes, that was not being changed.

SEN. O'NEIL questioned if they were picked up and put back in jail, could they still make bail. **SEN. HALLIGAN** said yes, and the

judge could make additional conditions of release on bail. He said initially when a person came in, it was assumed they would be able to comply with the conditions. He said the conditions had to directly relate to the offense.

SEN. O'NEIL asked what kind of protection the accused person had if he went out and started dating the probation officer's daughter. **SEN. HALLIGAN** replied the written statement of the truth of the facts relating to the breach of the conditions of release had to be filed with the court within 12 hours to justify that detention/arrest. If the facts were false, then it would be a false arrest and subject to penalties.

Closing by Sponsor:

SEN. HALLIGAN closed on SB 426 asking for succinct questions of the proponent tomorrow.

{Tape : 2; Side : A}

EXECUTIVE ACTION ON SB 399

SEN. RIC HOLDEN shared concerns regarding pharmacies and removing video stores such as Blockbuster. Therefore, on page 2 of the bill, sections 6-9, the amendment called for increasing the percentage of the business's income from sexually orientated sales up to 25%. The amendments, **EXHIBIT(jus37a04)**, also removed hotels and motels.

Motion: **SEN. HOLDEN** moved **AMENDMENTS SB039901, exhibit (4).**

Discussion:

SEN. STEVE DOHERTY asked who would figure out the 25%, count and/or watch the videos to see if they met the definition.

SEN. HOLDEN understood that the department, with cause, conducted the audits.

SEN. DOHERTY clarified that if the department suspected something, they went in to count and watch the videos to determine if 25% were or were not pornographic. If that was the case, was their staff currently trained to view videos to determine their pornographic content?

Kathleen Martin, Communicable Disease Bureau Chief, said no.

SEN. JERRY O'NEIL asked if *Pretty Woman* and *Dirty Dancing* would be considered sexually orientated videos.

SEN. HOLDEN stated the bill provided exclusions depending on the movie rating.

CHAIRMAN GROSFIELD interjected it was page 26, line 5.

SEN. HOLDEN said the motion picture industry already provided ratings and R and PG-13 movies would not be considered part of SB 399.

SEN. O'NEIL clarified that it had been mentioned that the state couldn't use the Motion Picture Associations ratings system, but would have to create their own.

SEN. HOLDEN responded that when the charge was lead against the Motion Picture Industry for TV and movie content, these rating systems were the standard. The bill referenced them because they had been approved by the federal government. He closed on his motion saying the amendments tightened up the bill. They helped address the concerns raised by the proponents. The bill was strengthened by removing some of the people that would have been affected by the original draft.

Vote: Motion to **adopt amendments SB039901 carried unanimously.**

Motion: **SEN. HOLDEN** moved that **SB 399 DO PASS AS AMENDED.**

Discussion:

SEN. DUANE GRIMES wondered whether the department currently had the authority to go into one of the 200 establishments to inspect based on current public health criteria.

Ms. Martin said local health authority did have the authority and could take action if they perceived a public health risk in any public establishment.

SEN. GRIMES questioned if any appreciable action had been taken in the state.

Ms. Martin said in the past they had gone into some establishments and asked for corrective action on a few things, but had never tried to close the place down.

CHAIRMAN GROSFIELD noted a suggestion by a proponent that an affidavit could be pending from **Dr. Spence** regarding the public health risk associated with STD's. He asked for clarification.

Dr. Michael Spence, State Medical Officer for DPHHS, said prior to coming to Montana, he served in many capacities in medical

education and felt those positions prompted the misunderstanding. He served on the faculty of Johns Hopkins University School of Medicine and was the Director of the Baltimore City Health Department's Sexually Transmitted Disease Clinics. He also ran the largest clinic in Philadelphia for HIV infected women in the U.S. It gave him a strong background in sexually transmitted diseases. In terms of this legislation, he felt he could talk about sexually transmitted diseases as an expert if asked specific questions. He could also provide a written document regarding identification, diagnosis, management, and prevention of these diseases. He offered that assistance, but nothing further.

CHAIRMAN GROSFIELD mentioned the communicable nature of diseases from residues left in some of these places. He noted a statement from the hearing that some of the virus or bacteria remained viable for up to five days. He asked for a response to that.

Terry Peterson, Supervisor in STD program of DPHHS, said once viruses were outside the body, they were very unstable and died, especially HIV virus. The testimony stating that the virus was viable for four or five days was not accurate. He presented Facts about the Human Immunodeficiency Virus and Its Transmission, **EXHIBIT (jus37a05)**. He noted the top of page two referred to HIV transmission environments and said there was never a case of it being environmentally transmitted, which would be found in masturbation parlors. He noted hepatitis B was a little more stable outside the body, but it was an under the skin type infection, and just to get it on a person would not transmit the virus.

CHAIRMAN GROSFIELD asked if **Dr. Spence** had anything to add.

Dr. Spence corroborated what **Mr. Peterson** said about no documented evidence showing that any sexually transmitted infection could be acquired from an inanimate object or secretions on that object.

CHAIRMAN GROSFIELD questioned how a public health risk would be assessed in general in regards to the bill.

Dr. Spence replied sexually transmitted diseases were passed from one individual to another through close intimate contact. Without that contact, there was no public health risk.

SEN. MIKE HALLIGAN questioned if someone had a bodily fluid on their wrist, then wiped their mouth and it got into their mouth, would it result in transmission of a disease.

Dr. Spence said the likelihood of passing any contamination from one body part to another was possible, but highly unlikely. In the event of secretions on a tabletop or wall and passing it to another person was almost non-existent. The one exception: needle contamination could pass along hepatitis and AIDS from one person to another through infected needle sticks. That was a healthcare hazard to the healthcare workers.

SEN. GRIMES said allegations mentioned skin to skin contact for a number of things. In that case, would that be a public health risk?

Dr. Spence didn't see an increase in public health risk of any one establishment over another. He said what two people did in the privacy of their own confined area could be a hazard from one person to another, but it wasn't a major public health risk.

SEN. GRIMES questioned in the event that people were coming in contact with people anonymously and in contact with groups who did not know they had sexually transmittable diseases, if that was a public health risk.

Dr. Spence responded that sexual contact between two individuals with one unknowingly infected certainly could lead to transmission irrespective of the circumstances, the situation, or the place where that contact occurred.

SEN. O'NEIL commented that if a governmental entity went into lewd businesses and forced them to put in better lighting and to clean up the flooring and walls, then those businesses would have the government seal of approval. He didn't like that and didn't want government approved sex shops in the state. He didn't see the definition of a viewing room, but under the bill if someone was watching XXX videos or looking at those types of magazines, the bill provided anonymity and kept them from the general public. He agreed with the policy that some of the dirty stuff shouldn't be in Montana. However, the unintended consequences would be governmentally approved places. He supported the concept, but not the bill.

SEN. HOLDEN responded that many places were licensed under public health concerns. If speech, writing, and photography couldn't be regulated, then why not regulate the health issues concerning that business. The testimony proved these were unclean, poorly lighted businesses that were downright filthy. It didn't make good sense, for the general public as a whole, not to make sure that these businesses were clean. He argued that food booths at the county fair were more heavily regulated than these types of businesses.

SEN. GRIMES gave his support to the bill. He felt it was ironic that consenting adults going to a restaurant were protected, but they weren't protected when going to sex shops. He thought the acts they performed in those places were public health concerns. Especially heinous was the effect on youth who went in there. He said Constitutional rights were claimed in issues that were potentially morally offensive. He didn't feel it was a right for someone to infect young people or others.

{Tape : 2; Side : B}

Other states regulated, and so should Montana. This was the place where public health should be utilized.

SEN. O'NEIL emphasized he wanted the public to view these places as dirty, disgusting, and dangerous. He wanted them to think that by going to these places, their body parts would fall off. He didn't want them to think the state went in to make the places safe for them. The state could ensure safety at the fair grounds and welcome the public because the food booths were safe. He definitely didn't want the state to go into the sex shops, then welcome the public because they were approved. He felt it was bad policy.

SEN. HALLIGAN asked who made the determination if a business had sexually orientated books and videos. Practically, who determined the sexuality of an item, and how was it policed?

SEN. HOLDEN referenced page 25 of the bill listing exemptions. If the business wasn't exempted, then it could be regulated. The bill didn't stop any one from having XXX rated movies, but if the business had those types of movies and wasn't exempted, then the bill required the business to be 1000 feet away from a school or church. Then, those businesses would have to get a license. He argued it was a licensing bill, not infringing on their rights to express themselves. The legislation placed guidelines on where these businesses could be.

SEN. HALLIGAN restated his question. Once it was determined that a business qualified to have this license, then who went in to review the material to determine the 25%.

SEN. HOLDEN said the department would develop the administrative rules. The businesses would have to apply for licenses and they would know who they were. If they didn't, then citizens in the community would contact the department and ask for the business to be researched to see if they fell within the guidelines of the bill.

SEN. HALLIGAN asked the increase of communicable diseases over a ten-year period of time in Montana.

Mr. Peterson said all diseases were different. Chlamydia, a bacterial infection, was the most prevalent and affected people between the ages of 15-25 mostly. Gonorrhea, a bacterial infection, had dropped in prevalence with only 62 cases last year. Syphilis, a bacterial infection, was basically non-existent in Montana; there were no cases last year. The year before saw two or three cases and the year before that none. He said there were 20 HIV-AIDS cases last year. He said overall, sexually transmitted diseases were decreasing. He acknowledged some of them were asymptomatic (took awhile for them to show up) so time factors were hard to put in, ie: for chlamydia cases. He said morbidity also was decreasing.

SEN. HALLIGAN clarified communicable diseases were decreasing. He asked where chlamydia was transmitted; bookstores, college campuses, etc.

Mr. Peterson said anybody could get it, but it mostly affected woman and they were catching it from contact in backseats of vehicles, or where ever.

SEN. HALLIGAN asked about targeted education to that age group about this problem.

Mr. Peterson said the Office of Public Instruction had mandatory STD programs in their curriculum. The department utilized public service announcements. Twenty one STD/Family Planning Clinics operated in the state and county health departments distributed pamphlets, posters, and videos as education tools. National TV PSA's ran and the department gave talks on request.

SEN. HALLIGAN asked about the proliferation of adult bookstores or establishments.

Mr. Peterson said he had been with the department for nine years and one investigation had occurred into such a place. It turned out that a prostitute had infected the person and it had nothing to do with the place. Other than that, there were no infections related to any of these places.

SEN. HOLDEN said **SEN. HALLIGAN** was missing the point regarding sex crimes. He said the committee had tried to crack down on sex crimes. He argued perpetrators acted out what they saw in pictures because they were mentally deranged. The bill said these establishments could not be within 1000 feet of a school. He said this bill attempted to curb sex crimes.

SEN. HALLIGAN wanted to know of existing zoning or planning regulations allowing for the clustering of certain establishments. He felt the basis to pass those laws (for alcohol establishments) could be used for these types of places as well.

SEN. HOLDEN said that was the crux of the bill. Because of the delicate nature of the issue, local communities did not want to address it. He felt the state government could address this issue to help out the local communities.

SEN. O'NEIL said supporters of the bill didn't say these places were going in next to schools. If that was the reason to have the bill, this was the wrong bill.

SEN. WALT McNUTT questioned testimony that said there were approximately 200 of these businesses in the state. He wondered how many of those were in 1000 feet of a school or church. He didn't hear anything that substantiated this as a problem.

SEN. HOLDEN responded that the bill was proactive. It said that this was identified as a problem, and action could be taken now to avoid these places going in next to schools or churches. He argued that in his community, the Main Street ran close to the school and the high school sat on Main Street. Some of the vacant buildings could possibly house such an establishment that would not be wanted too close to children.

CHAIRMAN GROSFIELD referred to page 6, section 3 of the bill regarding businesses covered by the bill. He questioned the number that 200 existed in the state. He felt that hundreds of potential businesses could fall under the definitions. It referred to bookstores and pornography, which created a difficult area of accurate definition to withstand challenge versus dealing with the chilling effect on communities, i.e. an adult cabaret that commonly featured entertainment for sexual interests. The owner claimed the dancing wasn't for sexual interests, but members of the community did. This created a situation of a chilling effect on business owners about what they could and could not do. This bothered him and he opposed these types of bills on that basis, not because he liked the types of establishments. He agreed with **SEN. O'NEIL** about putting a stamp of approval on these types of places. He didn't think this bill only referred to masturbation parlors, but went way beyond that to other kinds of businesses. Even the state medical officer and professionals stated the most graphic establishments didn't create a public health risk. This was not a public health risk that the CDC would have to come in and investigate. The situation wasn't that dire. This was a health concern among individuals much like Syphilis or Gonorrhea.

He couldn't support the bill.

SEN. GRIMES said sexually transmitted diseases had exploded since he was young and the extent to which communicable diseases occurred in these types of places might not be able to be known. He said if people were concerned about Hantavirus, then they should be cautious about this. He said the expert testimony said they didn't know if they could trace some of the communicable diseases to these places or not because the people had been all over the place. He believed it was a problem, although he recognized the concerns with the bill's drafting. He said he would vote for the bill, but questioned if **SEN. HOLDEN** was willing to leave in only the inspection authorization for the department in section 6 and section 18 on the location restrictions, and whatever other section saying these establishments were off limits to minors. He believed the biggest thing was minors going into these places and the horrible ramifications for their future. He felt that didn't tell the Department of Health when and where, but left it to their discretion if it got out of hand. It would leave out the definitions. He thought it would make the bill more acceptable.

SEN. HOLDEN said the areas he suggested leaving in were the core of the legislation, but he didn't think the definition section could be struck and still be implemented. That section guided the other sections.

SEN. GRIMES agreed with leaving in the definitions that applied to the sections left.

SEN. HOLDEN closed on the motion saying it was a straight up public policy decision. He proposed that if the definitions were read and not read into, then things would be fine. He said the definitions and the entire bill had already been challenged across the nation in various courts and the reason he agreed to carry the bill was because they had met those challenges. He said Montana wasn't the first to try to regulate and license adult bookstores. He noted other states had successfully had their laws upheld. A person from the ACLU went through the bill and acknowledged that these parts met Constitutional and court challenges, even if they didn't agree with them. He said there was court precedence. The bill asked the businesses to acquire an operator's license and to be inspected.

{Tape : 3; Side : A}

Page 13, lines 15 & 16, stated how critical it was that these adult bookstores be regulated and licensed. He wondered who could argue against the merits of having an adult bookstore next to the

public park or the school. He argued incredible behavior went on in these bookstores, not to mention the sexual crimes that took place around these type of places. He said another issue questioned what the bookstores were facilitating. He felt they facilitated the sale of narcotics and the exploitation of women in words, writing, and photographs, but also through prostitution. He said prostitution rings were run by adult bookstores and many times the owners and managers of these places were pimps. He said the bill regulated the signage of these places, which was not appropriate for Montana. The proponents said if the bill passed, then they had lawyers who felt so strongly about the merits and the ability to defend, that they would do it at no cost to the state. They would offer their services to the state to defend this piece of legislation. Because of all these reasons, the bill should be passed.

Vote: Motion that **SB 399 Do Pass As Amended failed 3-6 with Bishop, Grimes, and Holden voting aye.**

Motion: SEN. HALLIGAN moved that **SB 399 BE TABLED.**

Discussion: None

Vote: Motion carried 6-3 with Bishop, Grimes, and Holden voting no.

ADJOURNMENT

Adjournment: 11:20 A.M.

SEN. LORENTS GROSFIELD, Chairman

ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT (jus37aad)